



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL OFFICE
61 FORSYTH STREET
ATLANTA, GEORGIA 30302-1388

MAR 02 2005

4 APT-APB

Peter Hessling, Administrator
Air Quality Division
Pinellas County Department
of Environmental Management
300 S. Garden Avenue
Clearwater, Florida 33756

Dear Mr. Hessling,

This letter is to provide clarification on the issue of "parallel review" of title V permits under the Clean Air Act. This topic has been recently discussed at the State and Local Air Directors Meeting and on the title V permits conference call between the U. S. Environmental Protection Agency (EPA) Region 4 office and the state and local permitting authorities.

In July 2002, EPA Region 4 sent a letter to your agency explaining that we were no longer going to conduct parallel reviews of title V permits. That decision was based on EPA's initial assessment of the 2002 district court decision in Sierra Club v. Whitman, Civil Action No. 01-CV-1991 (D.D.C. Jan. 29, 2002). Since that time, EPA has had the opportunity to more fully consider the issue of parallel review and the impact of the Sierra Club v. Whitman decision. As a result of this further review, EPA believes that neither the title V provisions of the Clean Air Act nor EPA's title V regulations expressly prohibit concurrent or parallel reviews of title V permits by EPA and the public. Both title V and EPA's part 70 regulations separately address the requirements for public review, affected state review, and EPA review of state permits, but do not specify that they be sequential. We think any contrary opinion articulated in Sierra Club v. Whitman was dicta unnecessary to the holding in that case and that the district court's opinion on this point should not be followed.

Consequently, while EPA continues to encourage state and local permitting authorities to implement sequential reviews, they can request that Region 4 conduct EPA's 45-day review of proposed title V permits in parallel with the public's review of draft title V permits (*i.e.*, during the public comment period). It must be noted that there are certain scenarios in which a "proposed" title V permit that has been given to EPA to review in parallel with the draft title V permit must be withdrawn and re-proposed. These scenarios include, but are not limited to cases where there are changes to the permit as a result of public comment and cases where recommendations from an affected state are not being incorporated. There are other scenarios (*e.g.*, controversial or complex permits) where parallel review may not be appropriate. In any case, records of all comments received and the issues raised must be maintained pursuant to

40 CFR 70.7, so that the Administrator can fulfill his obligation relative to citizen petitions to object.

If a permitting authority is interested in following the parallel review process, we recommend either formally revising your title V program or including details of the parallel review process in the Implementation Agreement with EPA or state and local permit processing protocols. For reasons of transparency, it is recommended that language be added to public notices that indicate whether the particular permit will be following the parallel review process and include a reference to Region 4's website, which contains information on the EPA 45-day review deadline and the deadline for citizen petitions. Finally, regardless of whether the parallel process is used, the calculation to determine the proper time to submit citizen petitions to object must be conducted as if the permit review was done sequentially. To assist the permitting authorities, EPA has included enclosures that detail the information that EPA requires to process a title V permit under parallel review and sample language for public notices of title V permits undergoing parallel review.

If you have questions regarding this letter, please contact me or Kay T. Prince, Chief of the Air Planning Branch at 404-562-9026.

Sincerely,



Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division

Enclosures (2)

1. EPA Region 4 Permit Review Process
2. Sample Public Notice Language
(parallel processing only)

Enclosure 1: EPA Region 4 Permit Review Process

I. Information to be Submitted

The following information may be submitted to EPA either in hard-copy form or electronically via email.

- A. If a title V permit undergoes **Sequential Review**, the permitting authority must, at a minimum, submit the following information regarding the proposed title V permit:
1. **Source Name**
 2. **Permit Number**
 3. **County**
 4. **Proposed title V permit** (or if draft title V permit was previously sent to EPA, a declaration that no changes were made to the draft title V permit and it can now be considered the proposed title V permit)
 5. **Statement of Basis** (or equivalent detailed explanation/writeup of the permit)
 6. **Public Comments** (if any were received)
 7. **Response to Comments** document, if one was created by the permitting authority
- B. If a title V permit undergoes **Parallel Review**, the permitting authority must, at a minimum, submit the following information regarding the draft/proposed title V permit:
1. **Source Name**
 2. **Permit Number**
 3. **County**
 4. **Draft/Proposed title V permit**
 5. **Statement of Basis** (or equivalent detailed explanation/writeup)
 6. **Beginning and Ending Dates** of the public comment period

II. Determining EPA's 45-Day Review Period

EPA determines the end of our 45-day review period using the date the proposed or draft/proposed title V permit was "received" by EPA. "Received" is defined as either the date the proposed title V permit email was sent to EPA or the EPA date stamp on the hard-copy. EPA encourages the permitting authorities to submit proposed title V permits electronically, as this minimizes the delay in starting our 45-day review period.

- A. In the case of **Parallel Review**, EPA's 45-day review period will be based on the **later** of:
1. the date EPA receives (as defined above) the draft/proposed title V permit
 2. the beginning of the public comment period

Enclosure 2: Sample Public Notice Language (parallel processing only)

EPA has agreed to treat this draft title V permit as a proposed title V permit and to perform its 45-day review provided by the law and regulations concurrently with the public notice period. Although EPA's 45-day review period will be performed concurrently with the public comment period, the deadline for submitting a *citizen petition to object* to the EPA Administrator will be determined as if EPA's 45-day review period is performed after the public comment period has ended (*i.e.*, sequentially).

The status regarding EPA's 45-day review of this project and the deadline for submitting a citizen petition can be found at the following website address:

<http://www.epa.gov/region4/air/permits/insertstatename.htm>